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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,305	03/13/2004	Zhen Liu	YOR920040072US1	8285
55450	7590	10/29/2008		
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EXAMINER				
MATTIS, JASON E				
ART UNIT		PAPER NUMBER		
2416				
NOTIFICATION DATE		DELIVERY MODE		
10/29/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/800,305

Applicant(s)

LIU ET AL.

Examiner

JASON E. MATTIS

Art Unit

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-11,13,15,16,18,21-26,28 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-11,13,15,16,18,21-26,28 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the Amendment filed 7/9/08. Claims 2, 4, 5, 12, 14, 17, 19, 20, 27, 29, and 31-36 have been cancelled. Claims 1, 3, 6-11, 13, 15, 16, 18, 21-26, 28, and 30 are currently pending in the application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3, 6-11, 13, 15, 16, 18, 21-26, 28, and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. The term "a substantially equivalent amount of area" in line 8 of claim 1 and in line 10 of claim 16 is a relative term which renders the claim indefinite. The term "a substantially equivalent amount of area" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For example, it is unclear exactly how close in area each cell needs to be to fall under the category of "a substantially equivalent amount of area". It is recommended that such relative language be removed from claims 1 and 16.

Claims 3, 6-11, 13, 15, 18, 21-26, 28, and 30 are also rejected since they each depend on a rejected base claim.

5. The term "substantially in half" in line 4 of claim 13 and in line 4 of claim 28 is a relative term which renders the claim indefinite. The term "substantially in half" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For example, it is unclear exactly how close to half equates to the claimed "substantially in half". It is recommended that such relative language be removed from claims 13 and 28.

6. Claim 11 recites the limitation "the step of connecting to additional points" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 10, which claim 11 depends on, recites the limitation "connecting additional nodes". It is recommended that "the step of connecting to additional **points**" in line 1 of claim 11 be changed to "the step of connecting additional **nodes**" such that the claim language is consistent and there is proper antecedent basis for this limitation.

Claim 26 contains the same problem as claim 11, as discussed above. The same change is also suggested for the language of claim 26.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 3, 6-11, 13, 15, 16, 18, 21-26, 28, and 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 1, 3, 6-11, 13, and 15, these claims are directed to a method; however, the method consists solely of a manipulation of data without a tangible and useful result and further without any tangible structure to carry out the method. To be a statutory process claim, the claim must either have independent physical acts or be limited to a practical application by producing a concrete, tangible and useful result. The preamble of independent claim 1 states that the method is for constructing an overlay multicast tree to deliver data from a source to an identified group of nodes; however, there is no step in the claim that reaches this result. It is recommended that a step such as using the created tree as a multicast tree by delivering data from a source to an identified group of nodes based on the multicast tree be added to the body claim 1, such that the claim includes a tangible and useful result. It is also recommended that some physical structure (i.e. some physical device executing the method) be added to claim 1 such that claims 1, 3, 6-11, 13, and 15 are directed to a statutory method claim.

Regarding claims 16, 18, 21-26, 28, and 30, these claims are directed to a computer readable medium containing a computer executable code that when read by a computer causes the computer to perform a method; however, the method consists solely of a manipulation of data without a tangible and useful result. To be a statutory process claim, the claim must either have independent physical acts or be limited to a practical application by producing a concrete, tangible and useful result. The preamble of independent claim 16 states that the method is for constructing an overlay multicast

tree to deliver data from a source to an identified group of nodes; however, there is no step in the claim that reaches this result. It is recommended that a step such as using the created tree as a multicast tree by delivering data from a source to an identified group of nodes based on the multicast tree be added to the body claim 16, such that the claim includes a tangible and useful result and claims 16, 18, 21-26, 28, and 30 are directed to statutory subject matter.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON E. MATTIS whose telephone number is (571)272-3154. The examiner can normally be reached on M-F 8AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason E Mattis
Examiner
Art Unit 2416

JEM

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